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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,569

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Pawel Musial

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EXAMINER

CHAKOUR, ISSAM

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

12/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,569	<b>Applicant(s)</b> MUSIAL, PAWEL	
	<b>Examiner</b> ISSAM CHAKOUR	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/11/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 2, 9-11, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huard et al (Huard, USPPA 2004/0259630) in view of Smith (Smith, US Patent 6,580,914) and further in view of Meade (US Patent 7,206,559 B2).

4. Consider claims 1 and 19, Huard discloses a method for providing user data pertaining to a user of a mobile terminal (e.g., locator, which can be a handheld device, see [0017] lines 8-11) to a recommender system (e.g. selector, see [0021] lines 2-3) , the method comprising the steps of:

determining, by the terminal, a current location of the terminal (See [0017] lines 5-6) wherein said current location is determined after receiving a initiating signal, said initiating signal being one of a user input (e.g., entering location information or activation) and a received signal (See [0017] lines 12-14 and 18-19) ;

saving, an identifier of the determined location based on a longevity (See [0020], lines 4-6) of said terminal in an area proximate said current location (Since the steps in Huard include a monitoring element “activity monitor” that uses location information from the locator and timing the information against a timer value, these steps entail storing the location, and since the location has an ID, this means that location is to be identified and distinguished for processing and storage, see [0018] lines 3-6); and

informing, by means of the terminal, said recommender system of the determined location (See claims 36 and 37).

wherein said determining step comprises determining a length of time for which the terminal stays in a region, and said recommender system is arranged for proposing content related to said region if the length of time is longer than a predetermined time period (see [0020] lines 1-6).

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Huard does not teach that the saving step is done at the mobile terminal. However, Smith discloses in the same field of endeavor saving in the terminal current location (See column 3 lines 23-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's locator of the portable device such that it is equipped with the storage and the timing feature in order to perform the location reporting process in accordance with time condition as in Huard.

Huard in view of Smith fails to explicitly teach that the recommender being a system of an consumer device. However, Meade teaches the mobile being used to apply and update user preferences in appliances and consumer devices such as DVR, PVR, or TIVO (See column 8, lines 51-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's invention in view of Smith with the feature taught by Meade in order to receive user preferences, suggestions, or rewards in devices such consumer electronic devices such recommended programs or TV purchases.

5. Consider claim 10, Huard discloses a mobile terminal for providing user data pertaining to a user of said terminal (e.g., locator, which can be a handheld device, see [0017] lines 8-11) to a recommender system (e.g., selector, see [0021] lines 2-3), the terminal comprising:

a memory (Since the steps in Huard include a monitoring element "activity monitor" that uses location information from the locator and timing the information against a timer

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value, these steps entail storing the location, and since the location has an ID, this means that location is to be

identified and distinguished for processing and storage, see [0018] lines 3-6);

a transmitter (See [0017] lines 12-13);

a receiver configured for receiving a wireless signal (See [0018] lines 3-4); and

a processor for:

determining, a current location of the terminal (See [0017] lines 5-6), wherein said current location is determined after receiving a initiating signal, said initiating signal being one of a user input (e.g., entering location information or activation) and a received signal (See [0017] lines 12-14 and 18-19) ;

saving an identifier of the determined location (See [0018] lines 3-6) to said memory based on a longevity of said terminal in an area proximate said current location (See [0020], lines 4-6); and

informing, by means of said transmitter, said recommender system of the determined location (See claims 36 and 37).

wherein said determining step comprises determining a length of time for which the terminal stays in a region, and said recommender system is arranged for proposing content related to said region if the length of time is longer than a predetermined time period (see [0020] lines 1-6).

Huard does not teach that the saving step and the subsequent step is done at the mobile terminal. However, Smith discloses in the same field of endeavor saving in the terminal current location and reporting the location (See column 3 lines 23-30).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's locator of the portable device such that it is equipped with the storage and the timing feature in order to perform the location reporting process in accordance with time condition as in Huard.

Huard fails to explicitly teach that the recommender being a system of an actual consumer device. However, Meade teaches the mobile being used to apply and update user preferences in appliances and consumer devices such as DVR, PVR, or TIVO (See column 8, lines 51-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's invention with the feature taught by Meade in order to receive user preferences, suggestions, or rewards in devices such consumer electronic devices such recommended programs or TV purchases.

6. Consider claims 2 and 11, Huard in view of Smith and Meade discloses the method and the terminal in accordance with claims 1 and 10 respectively, Huard further teaches the method wherein said terminal further includes has an input device, said input device providing means for providing said initiating signal (e.g., entering location information or activation, see [0017] lines 12-14 and 18-19).

7. Regarding claims 9 and 18, Huard in view of Smith and Meade teaches the limitations in accordance with claims 1 and 10 respectively. Huard discloses a step that

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the recommending or selection, or rewarding step may be automatic (See [0046]).

Huard does not teach expressly that the determining, saving steps are initiated automatically by the terminal without the intervention by the user other than moving the terminal to a different location and that the informing step is automatically initiated, but by means of a request by user.

However, Smith teaches the method wherein the determining, saving steps are initiated automatically (See column 5, lines 29-30) by the terminal without the intervention by the user other than moving the terminal to a different location. Furthermore, Meade on the other hand teaches the informing step is initiated automatically between the mobile device and a recommender (See column 10, lines 34-42). Note that making a process automatic as opposed to prompt input and manual initialization is recognized as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one of ordinary skill at the time of the invention was made to add this feature as taught by Smith and Meade to Huard's invention because of the convenience it offers the user.

8. Claims 3-8 and 12-17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Huard in view of Smith and Meade as applied to claim 1 and 10 respectively and further in view of O'Neil (US 2002/0107027).

9. Consider claims 3 and 12. Huard in view of Smith and Meade teaches the method and the terminal in accordance with claims 1 and 10 respectively. Huard in view of Smith and Meade fails to explicitly teach the method wherein said received signal causes said terminal to execute the steps of:



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recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and

if it is recognized that the terminal is outside the home territory, automatically and without intervention by the user other than moving the terminal to a different location, initiating a timer for starting a first predetermined time period.

Nonetheless, O'Neil discloses a method wherein said received signal causes said terminal to execute the steps of:

recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and if it is recognized that the terminal is outside the home territory (inherent in roaming cellular phones), automatically and without intervention by the user other than moving the terminal to a different location (See claim 2 and 3).

initiating a timer for starting a first predetermined time period (See [0039], lines 22-23.

Note that timer is indispensable in application where counting the duration, delaying, or measuring time is required).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement the system taught by Huard in view of Smith and Meade with an automatic start of timer to record the presence of the user at a location other than his/her home location, because in Huard's invention, the location information is to be entered or the user enables the entry of the location, but only if the user stays at that location for a given time would the system validate that the user is effectively is at a location different from his/her home location, otherwise the user is passing by, roaming, or not staying there for long, which may not necessarily be of interest to the user.

10. Regarding claims 4 and 13, Huard in view of Smith, Meade, and O'Neil teach the method and the terminal according to claims 3 and 12 respectively. Huard as mentioned above teaches the current location determined in the determining step changes in corresponding with the movement of the terminal (See [0027], note that location can include a wider region location information not just inside a particular confined area). O'Neil further teaches that the current location determined in the determining step changes in correspondence with movement of the terminal, said current location comprising at any moment a region and a sub-region within the region (See abstract), the region and sub-region (an example of the region is particular shopping mall, wherein the sub-regions are local stores within that mall, see [0028], line 7) being discernible by the terminal from the signal, the starting step further comprising the step of monitoring said signal to determine whether at least one of the region and the sub-region stays constant over said first predetermined time period (See [0042], lines 4-6).

It would have been obvious to use O'Neil timing scheme because one of ordinary skill in the art at the time of the invention would have had a good reason to pursue the idea of timing the location of the user in a particular region as it would have been within his/her technical grasp. In another word, after determining the location of the user, before recommending any program, rewarding a prize, or considering the location as one of interest to the user, there must be a time interval to test if the user is effectively in an area long enough and he/she is not just passing by or roaming the area shortly.

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11. Regarding claims 5, 8, 14, and 17. Huard in view of Smith, Meade, and O'Neil teaches the method and the terminal in accordance with claims 4 and 13 respectively. Huard in view of Meade and O'Neil teaches the method wherein the monitoring step comprises the steps of: monitoring said signal to determine whether the region stays constant over said first predetermined time period as mentioned above. Huard in view of Smith, Meade, and O'Neil does not explicitly teach the step further comprising monitoring said signal to determine whether the sub-region stays constant over a second predetermined time period. However, it would have been obvious to one of ordinary skill in the art at the time of invention to monitor the location of the user in an area that is smaller than the previous one for another predetermined period of time, because part of the recommender's function is to narrow down or further select a particular outcome that is of interest to the user based on the location and the time spent in that location. It would have been obvious to further test if the user for example is still at a certain location in the play area or has moved to different play gallery. Furthermore, the monitoring is obvious to have encompassed testing if the user is at particular gallery or just passing by after shortly checking the game, if the user is there for shorter time than the predetermined time, then the recommender would not transmit or process the location information of said gallery. Similarly, before storing its location as one of interest, the mobile would continuously monitor its location over another predetermined period of time to see if the user is at that location or have moved on. Therefore, it would have been obvious to one of ordinary skill in the art to pursue these steps which would have yielded the predictable results as set forth above.

12. As with regards to claims 6 and 15, Huard in view of Smith, Meade, and O'Neil teaches the method and the terminal as discussed above in accordance with claims 5 and 14 respectively, Huard further teaches the saving step further comprises the step of saving the region as an identifier (See [0018] lines 3-6) and the informing step comprises the step of informing the recommender system of said region (See claims 36 and 37). Huard in view of Smith, Meade, and O'Neil teaches testing the region to determine if it has stayed constant over a period of time as mentioned above. Although Huard in view of Smith, Meade, and O'Neil does not explicitly teach the condition that if it is determined that the region has stayed constant over said first predetermined time period, testing for this condition would have been obvious because the purpose of including a monitoring step is to monitor the events by testing whether the timer reached a predetermined amount of time in the same region, if it does without any change of the location of the user, then this region might be of an interest to the user, and saving it for later transfer of this location information to the recommender for selecting a particular prize as in Huard or updating the preferences as in Meade.

13. With regards to claims 7 and 16, Huard in view of Smith, Meade, and O'Neil teach the method and the terminal as discussed above in accordance with claims 6 and 15 respectively, Huard does not teach the method wherein, if it is determined that both the region and the sub-region have stayed constant over the first and second predetermined time periods respectively, the saving step further comprises the step of

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saving the sub-region as an identifier and the informing step comprises the step of informing the recommender system of said sub-region. However, as mentioned above, the monitoring function not only tests if the user has changed location in a region in a given time, it also has to test for change of location in a much narrower area (sub-region) if the first region is much larger, it would then have been obvious to one of ordinary skill in the art at the time of the invention, to store the location of the sub-region as an identifier because it will allow Huard's system to further narrow down by means of the recommender the selection of particular prizes in that particular sub-region in a gallery having multiple play areas.

### ***Response to Arguments***

1. Applicant's arguments filed 10/11/2010 have been fully considered but they are not persuasive.
2. Regarding claims 1 and 19, the applicant submitted that as acknowledged in the previous office action "Huard in view of Smith fails to explicitly teach the recommender being a system of an actual consumer device". The applicant states that, Meade merely describes a program recorder having TIVO capability and VCR capability. And that there is nothing in Meade (nor Huard or Smith) which relates to a recommender system of a consumer electronic device- Much less how locations determined and recorded by a mobile terminal are provided and used by an electronic device's recommended system.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

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are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Hence, the examiner respectfully disagrees and submits that in Huard the location is used as reported by the portable device in order to have a certain reward or service content, it is broadly interpreted as having the same objective as claimed by the present application, since the objective is to present service content responsive to a location reporting. Since the specifications mention explicitly in page 1 that the TIVO is a recommender system. Meade also discloses a TIVO “a recommender”, content is adjusted and filtered out according to user preferences, this feature was imported to showcase that it would have been obvious to modify Huard’s invention in view of Smith to enable using the location as a mean to providing user related content from a TIVO rather than providing awards. Note that Smith discloses filtering out content based on location. Therefore, TIVO being a recommender system that uses criteria based user preferences provides location based content in response to the provision of location information. Furthermore, the applicant based on his statement in page 13 of the remarks, that recommender systems for consumer electronic are well known in the art, admitting that in fact Meade’s reference is in fact a perfect example for which it is obvious to combine the abovementioned references for the reasons discussed in the rejections. Therefore, prima facie case obviousness has been established. Claims 1 and 19 are rejected as shown above. Therefore, claims 2-9 and 11-18 inherit the deficiency present in their respective independent claims, hence they are unpatentable.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ISSAM CHAKOUR whose telephone number is (571) 270-5889. The examiner can normally be reached on Monday-Thursday (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Perez Rafael can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/I. C./  
Examiner, Art Unit 2617

/MARIVELISSE SANTIAGO-CORDERO/  
Primary Examiner, Art Unit 2617